

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.4635 of 1986

..

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

TENSILE STEEL LTD

Versus

KISHORE C GOHIL

Appearance:

MR MR BHATT for Petitioner

MR HARSHAD J. SHAH for JIVANLAL G SHAH for Respondent

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 22/01/99

ORAL JUDGEMENT :

The petitioner (hereinafter referred to as "the

employer") being aggrieved by the award dated 23.5.1986 made by the Presiding Officer, Labour Court, Vadodara, which was published on 6.8.1986 in Reference (LCV) No.1343/77, has preferred this application.

2. Short facts as emerging from the award are as under :

The respondent (hereinafter referred to as "the workman") was a Fitter since about 13 years. On 30th March 1977 (forenoon) in Wire Drawing Department, a machine, known as SD- 1, was found to have developed some defects in its 2nd and 4th blocks. The Foreman of the employer addressed a note to the Maintenance Engineer, who in turn asked the workman to repair the machine. The workman, on examining the machine, stated that to set the machine right, the pipe carrying water to the machine is required to be opened and that being the work of a plumber, he will not carry out necessary repairs. The Maintenance Engineer pointed out that in the machine there is a cooling system for which water circulation is a must. If there is any defect, it is the duty of the Fitter to do the needful. However, the workman insisted that it is none of his job and he will not carry out the repairs. It appears that the workman instigated others as well not to carry out repairs, as a result of which others did not attend to the repair. On account of stoppage of this machine, not only this machine but other machines also stopped functioning on account of continuous process. Ultimately the Company had to suffer losses. It is also found that earlier there was settlement between the Union of the workmen and the employer, which was in force at the relevant time. But it appears that a fraction of workmen were insisting on their following demands :

- (i) promotion of Senior Helper to the post of Fitter;
- (ii) appointment of more Fitters and Helpers; and
- (iii) to increase their salary.

3. The Presiding Officer held that the workman was asked to repair water supply line connected to the Machine in Wire Drawing Department, known as SD- 1 and that despite the instructions from the Maintenance Engineer, the workman refused to attend the same. Thus, the workman has committed serious misconduct. The Presiding Officer further observed that therefore, the question to be decided is as to whether the punishment is just and proper or excessive.

4. Ultimately, the Presiding Officer quashed the order of dismissal dated 8.6.1977 holding that the punishment is excessive. The Presiding Officer also held that as the misconduct is proved and considering the other aspects, back wages should not be awarded; the workman should be reinstated within the period of 30 days.

5. According to Mr. Shah, learned counsel appearing for the workman, the workman was justified in refusing to carry out the repair and was justified in making the demand for appointment of Helpers and Fitters. He further submitted that the workman was also justified in refusing to carry out the work as the said work was to be performed by a plumber and not by a Fitter. He further submitted that the punishment being excessive, the Presiding Officer has rightly interfered with the order of punishment and this Court should not interfere with the order passed by the Presiding Officer, more particularly, when it is held that the workman has committed misconduct.

6. From the record it is very clear that it was admitted fact that the work was to be carried out by the Fitters. The Presiding Officer of the Labour Court held that the attitude and omission on the part of the Workman cannot be accepted. The Labour Court also found that on account of refusal by the Workman to carry out the repairs, the machine could not be operated and in view of the continuous process of the work, other machines were also required to be stopped as a consequences of which the Company suffered heavy losses. The Labour Court also held that despite the instructions given by the Maintenance Engineer, the Workman refused to carry out the work, which is a serious misconduct. In paragraph 19, the Labour Court also held that the Workman acted irresponsibly and looking the nature of the work which he did not carry out would justify the order of termination. Further, the Presiding Officer drew an inference despite an agreement of binding nature that there was a dispute with regard to the increase in the salary and appointment of Fitters and refusal of work was in the nature of protest. At the same time, the Labour Court has noted that there was a settlement with the Union which was in force and, therefore, the Workman should not have behaved in the manner in which he has behaved. The presiding Officer further drawn an inference that with a view to get the demands accepted by the employer, the workman has taken this step and it is only on account of misunderstanding on the part of the workman. The Presiding Officer further came to the conclusion that it

was a peaceful act on the part of the workman and no action was taken against other workman, and therefore, dismissal can be said to be a harsh action.

7. The Labour Court has committed a grave error in coming to this conclusion. If it is held that there is a serious misconduct on the part of the workman, then with a view to justify, to say that the action taken by the workman was in the nature of protest with a view to see that the demands are accepted, is nothing but taking a view contrary to the provisions contained in law. The Presiding Officer ought to have seen that the workman was required to work for which he was aware and despite the Maintenance Engineer conveying the workman to carry out the repairs, he has refused to carry out the repairs, as a result of which the Company has suffered losses. Not only that, but production was affected, and others also did not carry out repairs at the instance of the workman. In paragraph 10, it has been pointed out that on 29.3.1977 Fitters and Helpers called a meeting wherein a decision was taken not to carry out the repairs pertaining to the pipes and helpers should not discharge the duties of fitters. The same was signed by 20 workmen. In paragraph 12, the Tribunal has also noted that there was a settlement which was operative till 30.6.1978 and contrary to that agreement, the workman and other Fitters acted and despite the instructions did not carry out the repairs. It was the duty of the workman to act as per the instructions and when the agreement was in operation, it was not open for the workman to act contrary to that.

8. An employer is entitled to dismiss an employee;

- (i) where the act or conduct of the servant is prejudicial or likely to be prejudicial to the interest of the employer or to the reputation of the employer;
- (ii) where the act or conduct of the servant is inconsistent or incompatible with the due or peaceful discharge of his duties to the employer;
- (iii) where the act or conduct of a servant makes it unsafe for the employer to retain him in service;
- (iv) where there is insubordination to such a degree as to be incompatible with the continuance of the relations of the employer and employee, etc. In the instant case, refusal to work was on the ground that the work is to be carried out by

Plumbers though it was within the knowledge of the workman that the work is to be done by the Fitter, i.e. himself. Thus, intentionally, to bring undue pressure on the employer, the workman refused to carry out his duties and instigated others also not to carry out the work, as a result of which, the smooth running of the factory became impossible. It is because of his conduct, relations between the employer and their employees became strained. For a legitimate demand, he could have initiated proceedings under the law. But certainly he could not act in such a way which amounts to insubordination or it makes unsafe for the employer to keep such person in service. It is not a case of simpliciter negligence, but it is wilful refusal to work.

9. It is required to be noted that the employee is duty-bound to obey all lawful orders given to him by his employer. It is the duty of the workman to comply with the lawful orders of the employer. Conduct of declining to obey such orders will amount to insubordination. The industrial law has considered it as a serious misconduct. In the instant case, it is not disobedience simpliciter; the workman has instigated other workmen also from carrying out the repairs. When such is the nature of disobedience, it would justify nothing but an order of dismissal. The Presiding Officer has taken into consideration that it was his duty to carry out the work and he refused to carry out the work, but has seriously erred in not taking into consideration refusal to obey which in relation to discharge of his duties, must be considered as a serious misconduct. When it is coupled with other aspects, such as instigating others not to carryout the repairs resulting in loss to the employer, the order passed by the employer requires no interference.

10. In view of what is stated hereinabove, it is clear that the Presiding Officer has seriously erred in passing the order of reinstatement by exercising powers under section 11.A. The impugned order passed by the Presiding Officer is quashed and set aside. The petition stands allowed accordingly. Rule is made absolute. No order as to costs.

karim/csmathew